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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/156227

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 21, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on May 27, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly denied Petitioner's application for Family Care benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Chris Sobczak, Human Services Program Coordinator  
Milwaukee Enrollment Services  
1220 W. Vliet St., Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. In February 10, 2010, the Petitioner filed an application for Nursing Home Long Term Care Medicaid and to enroll in Family Care, another sub-program of the Medicaid program. (Exhibit 6, pg. 2)
3. On March 3, 2014, Milwaukee Enrollment Services (the agency) sent the Petitioner a notice indicating that his application for Family Care was denied because he was neither under age 19, a caretaker of a child under age 19, pregnant, disabled, over age 65 or blind. (Exhibit 7, pgs. 5-8)
4. March 10, 2014, the agency sent the Petitioner Information about Community Spouse Asset Share Calculation, indicating that the asset limit for his case was \$52,000 and that his spouse and he exceeded the asset limit. (Exhibit 7, pgs. 3 and 4)
5. Also on March 10, 2014, the agency sent the Petitioner a notice indicating that his application for Family Care benefits was denied because he was over the asset limit. (Exhibit 6, pgs. 2-6)
6. The Petitioner's daughter and secondary Power of Attorney (POA) filed a request for fair hearing on his behalf. It was received by the Division of Hearings and Appeals on March 21, 2014. (Exhibit 1)
7. Petitioner has a community spouse. (Stipulation of the Parties; Testimony of the secondary POA and Petitioner's wife)
8. Petitioner is over age 65. (Stipulation of the Parties; Exhibit 4, pg. 8)
9. The Petitioner has an individual retirement account that is worth \$42,437.59 and generates \$1,385.97 of income per year/ an average of \$115.50 per month. (Exhibit 5, pgs. 8-10)
10. The Petitioner has an annuity that is worth \$17,359.39 and that generates income of \$340.38 per year, or \$28.37 per month. (Exhibit 5, pg. 11)
11. The Petitioner also has a life insurance policy with a cash surrender value of \$16,328.27. (exhibit 5, pg. 12)
12. Petitioner's spouse's income is \$642.00 per month from Social Security. She has no other source of income. (Testimony of Petitioner's secondary POA)
13. Petitioner's income consists of \$320.00 from his pension and \$1818.00 from social security. (Exhibit 6, pg. 4)

### **DISCUSSION**

People eligible for Family Care Medicaid fall into one of the following categories:

#### **Group A eligibility**

1. **People 18 and over who meet full benefit EBD Medicaid financial and non-financial requirements** and who are also functionally eligible for FC at either the nursing home or non-nursing home level of care.
2. People 18 and over who meet BC+ Standard Plan, Well Woman Medicaid, Medicaid through Adoption Assistance or Foster Care **financial and non-financial requirements** and who are functionally eligible for FC at either the nursing home or non-nursing home level of care.

#### **Group B eligibility**

**People 18 and over who meet full benefit EBD Medicaid non-financial and financial requirements except for income**, who are functionally eligible for FC

at the nursing home level of care, and whose income is at or below the special income limit (See the Community Waivers Special Income Limit in 39.4.1)

#### Group C eligibility

**People 18 and over who meet full benefit EBD Medicaid non-financial and financial requirements except for income**, who are functionally eligible for FC at the nursing home level of care, and whose income is above the special income limit (see the Community Waivers Special Income Limit in 39.4.1), but whose allowable monthly expenses are sufficient to reduce their income to the medically needy limit (See EBD Medically Needy Limits in 39.4.1.)

*Emphasis added*

*Medicaid Eligibility Handbook (MEH), §29.3.1.*

Financial eligibility for EBD Medicaid, refers to income and asset limits. *MEH Sections 15 and 16* Thus, in order to be eligible for Family Care benefits, a person must be below the asset limit. *Id.*

Petitioner's assets were discussed in case MRA-156228, which stated the following:

#### *Initial Determination of Asset Eligibility*

Section 18.4.3 of the Medicaid Eligibility Handbook (MEH) describes how the CSAS is determined:

#### 18.4.3 Calculate the CSAS

The community spouse asset share (CSAS) is the amount of countable assets greater than \$2,000 that the community spouse, the institutionalized person, or both, can possess at the time the institutionalized person applies for MA.

IF the total countable assets of the couple are:	Then the CSAS is:
\$234,480 or more	\$117,240
Less than \$234,480 but greater than \$100,000	½ of the total countable assets of the couple
\$100,000 or less	\$50,000

CARES will send each member of the couple a letter that states the couple's total countable assets, the CSAS, how much the institutionalized spouse must transfer to the community spouse, the date by which the transfer must be made, and the institutionalized person's asset limit.

In this case, the countable assets, which at the time of application totaled \$76,125.24, fell under the \$100,000 mark. As such, the CSAS would normally be \$50,000. Thus, to be eligible, the combined assets of Petitioner and his community spouse would need to be below \$52,000. Clearly, the combined assets exceed the \$52,000 limit.

Regrettably, in case MRA-156228 it was determined that there was no basis upon which to transfer Petitioner's assets to his spouse, because combined income of Petitioner and his spouse exceeded the Minimum Monthly Maintenance Needs Allowance. Consequently, the \$52,000 asset limit remained

unchanged. Because Petitioner's assets of \$76,125.24 exceed the \$52,000 asset limit, the agency correctly denied his application for Family Care benefits.

### **CONCLUSION**

The agency correctly denied the Petitioner's application for Family Care benefits.

**THEREFORE, it is**

### **ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 4th day of June, 2014.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on June 4, 2014.

Milwaukee Enrollment Services  
Office of Family Care Expansion